

AMENDED IN SENATE MAY 11, 2010  
AMENDED IN SENATE APRIL 15, 2010  
AMENDED IN SENATE MARCH 23, 2010

**SENATE BILL**

**No. 989**

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**Introduced by Senator Hollingsworth**

February 8, 2010

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An act to amend ~~Sections 2699 and 2699.3~~ *Section 2699* of the Labor Code, relating to employment, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 989, as amended, Hollingsworth. Labor Code Private Attorneys General Act of 2004.

Existing law, the Labor Code Private Attorneys General Act of 2004, allows aggrieved employees to bring civil actions to recover penalties for violations of the Labor Code if the Labor and Workforce Development Agency or its departments, divisions, commissions, boards, agencies, or employees do not do so. The penalties collected in these actions are distributed 75% to the agency to be continuously appropriated for purposes of enforcement and education and 25% to the aggrieved employee, except that if the person does not employ one or more persons, 100% of the penalties are distributed to the agency by continuous appropriation.

This bill would require ~~that~~ an employee requesting court approval of the settlement of a civil action brought under the act ~~first to serve notice of the request~~ *a copy of the court's final approval order and settlement agreement* to the agency *within 20 days after the order is made and the settlement is final*.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 2699 of the Labor Code is amended to  
2 read:

3 2699. (a) Notwithstanding any other provision of law, any  
4 provision of this code that provides for a civil penalty to be  
5 assessed and collected by the Labor and Workforce Development  
6 Agency or any of its departments, divisions, commissions, boards,  
7 agencies, or employees, for a violation of this code, may, as an  
8 alternative, be recovered through a civil action brought by an  
9 aggrieved employee on behalf of himself or herself and other  
10 current or former employees pursuant to the procedures specified  
11 in Section 2699.3.

12 (b) For purposes of this part, “person” has the same meaning  
13 as defined in Section 18.

14 (c) For purposes of this part, “aggrieved employee” means any  
15 person who was employed by the alleged violator and against  
16 whom one or more of the alleged violations was committed.

17 (d) For purposes of this part, “cure” means that the employer  
18 abates each violation alleged by any aggrieved employee, the  
19 employer is in compliance with the underlying statutes as specified  
20 in the notice required by this part, and any aggrieved employee is  
21 made whole.

22 (e) (1) For purposes of this part, whenever the Labor and  
23 Workforce Development Agency, or any of its departments,  
24 divisions, commissions, boards, agencies, or employees, has  
25 discretion to assess a civil penalty, a court is authorized to exercise  
26 the same discretion, subject to the same limitations and conditions,  
27 to assess a civil penalty.

28 (2) In any action by an aggrieved employee seeking recovery  
29 of a civil penalty available under subdivision (a) or (f), a court  
30 may award a lesser amount than the maximum civil penalty amount  
31 specified by this part if, based on the facts and circumstances of  
32 the particular case, to do otherwise would result in an award that  
33 is unjust, arbitrary and oppressive, or confiscatory.

1 (f) For all provisions of this code except those for which a civil  
2 penalty is specifically provided, there is established a civil penalty  
3 for a violation of these provisions, as follows:

4 (1) If, at the time of the alleged violation, the person does not  
5 employ one or more employees, the civil penalty is five hundred  
6 dollars (\$500).

7 (2) If, at the time of the alleged violation, the person employs  
8 one or more employees, the civil penalty is one hundred dollars  
9 (\$100) for each aggrieved employee per pay period for the initial  
10 violation and two hundred dollars (\$200) for each aggrieved  
11 employee per pay period for each subsequent violation.

12 (3) If the alleged violation is a failure to act by the Labor and  
13 Workplace Development Agency, or any of its departments,  
14 divisions, commissions, boards, agencies, or employees, there shall  
15 be no civil penalty.

16 (g) (1) Except as provided in paragraph (2), an aggrieved  
17 employee may recover the civil penalty described in subdivision  
18 (f) in a civil action pursuant to the procedures specified in Section  
19 2699.3 filed on behalf of himself or herself and other current or  
20 former employees against whom one or more of the alleged  
21 violations was committed. Any employee who prevails in any  
22 action shall be entitled to an award of reasonable attorney's fees  
23 and costs. Nothing in this part shall operate to limit an employee's  
24 right to pursue or recover other remedies available under state or  
25 federal law, either separately or concurrently with an action taken  
26 under this part.

27 (2) No action shall be brought under this part for any violation  
28 of a posting, notice, agency reporting, or filing requirement of this  
29 code, except where the filing or reporting requirement involves  
30 mandatory payroll or workplace injury reporting.

31 (h) No action may be brought under this section by an aggrieved  
32 employee if the agency or any of its departments, divisions,  
33 commissions, boards, agencies, or employees, on the same facts  
34 and theories, cites a person within the timeframes set forth in  
35 Section 2699.3 for a violation of the same section or sections of  
36 the Labor Code under which the aggrieved employee is attempting  
37 to recover a civil penalty on behalf of himself or herself or others  
38 or initiates a proceeding pursuant to Section 98.3.

39 (i) Except as provided in subdivision (j), civil penalties  
40 recovered by aggrieved employees shall be distributed as follows:

1 75 percent to the Labor and Workforce Development Agency for  
2 enforcement of labor laws and education of employers and  
3 employees about their rights and responsibilities under this code,  
4 to be continuously appropriated to supplement and not supplant  
5 the funding to the agency for those purposes; and 25 percent to  
6 the aggrieved employees.

7 (j) Civil penalties recovered under paragraph (1) of subdivision  
8 (f) shall be distributed to the Labor and Workforce Development  
9 Agency for enforcement of labor laws and education of employers  
10 and employees about their rights and responsibilities under this  
11 code, to be continuously appropriated to supplement and not  
12 supplant the funding to the agency for those purposes.

13 (k) Nothing contained in this part is intended to alter or  
14 otherwise affect the exclusive remedy provided by the workers'  
15 compensation provisions of this code for liability against an  
16 employer for the compensation for any injury to or death of an  
17 employee arising out of and in the course of employment.

18 (l) The superior court shall review and approve any penalties  
19 sought as part of a proposed settlement agreement pursuant to this  
20 part. ~~Parties seeking court approval of a settlement pursuant to this~~  
21 ~~subdivision shall serve notice of the request for court approval~~  
22 ~~upon the Labor and Workforce Development Agency not fewer~~  
23 ~~than 20 calendar days prior to filing the request for approval in the~~  
24 ~~superior court. Within 20 days after the court has granted final~~  
25 ~~approval of a settlement and the settlement has become final, the~~  
26 ~~parties shall serve a copy of the court's final order and settlement~~  
27 ~~agreement upon the Labor and Workforce Development Agency.~~

28 (m) This section shall not apply to the recovery of administrative  
29 and civil penalties in connection with the workers' compensation  
30 law as contained in Division 1 (commencing with Section 50) and  
31 Division 4 (commencing with Section 3200), including, but not  
32 limited to, Sections 129.5 and 132a.

33 (n) The agency or any of its departments, divisions,  
34 commissions, boards, or agencies may promulgate regulations to  
35 implement the provisions of this part.

36 SEC. 2. Section 2699.3 of the Labor Code is amended to read:

37 2699.3. (a) A civil action by an aggrieved employee pursuant  
38 to subdivision (a) or (f) of Section 2699 alleging a violation of any  
39 provision listed in Section 2699.5 shall commence only after the  
40 following requirements have been met:

1 (1) The aggrieved employee or representative shall give written  
2 notice by certified mail to the Labor and Workforce Development  
3 Agency and the employer of the specific provisions of this code  
4 alleged to have been violated, including the facts and theories to  
5 support the alleged violation.

6 (2) (A) The agency shall notify the employer and the aggrieved  
7 employee or representative by certified mail that it does not intend  
8 to investigate the alleged violation within 30 calendar days of the  
9 postmark date of the notice received pursuant to paragraph (1).  
10 Upon receipt of that notice or if no notice is provided within 33  
11 calendar days of the postmark date of the notice given pursuant to  
12 paragraph (1), the aggrieved employee may commence a civil  
13 action pursuant to Section 2699.

14 (B) If the agency intends to investigate the alleged violation, it  
15 shall notify the employer and the aggrieved employee or  
16 representative by certified mail of its decision within 33 calendar  
17 days of the postmark date of the notice received pursuant to  
18 paragraph (1). Within 120 calendar days of that decision, the  
19 agency may investigate the alleged violation and issue any  
20 appropriate citation. If the agency determines that no citation will  
21 be issued, it shall notify the employer and aggrieved employee of  
22 that decision within five business days thereof by certified mail.  
23 Upon receipt of that notice or if no citation is issued by the agency  
24 within the 158-day period prescribed by subparagraph (A) and this  
25 subparagraph or if the agency fails to provide timely or any  
26 notification, the aggrieved employee may commence a civil action  
27 pursuant to Section 2699.

28 (C) Notwithstanding any other provision of law, a plaintiff may  
29 as a matter of right amend an existing complaint to add a cause of  
30 action arising under this part at any time within 60 days of the time  
31 periods specified in this part.

32 (b) A civil action by an aggrieved employee pursuant to  
33 subdivision (a) or (f) of Section 2699 alleging a violation of any  
34 provision of Division 5 (commencing with Section 6300) other  
35 than those listed in Section 2699.5 shall commence only after the  
36 following requirements have been met:

37 (1) The aggrieved employee or representative shall give notice  
38 by certified mail to the Division of Occupational Safety and Health  
39 and the employer, with a copy to the Labor and Workforce  
40 Development Agency, of the specific provisions of Division 5

1 (commencing with Section 6300) alleged to have been violated,  
2 including the facts and theories to support the alleged violation.

3 (2) (A) The division shall inspect or investigate the alleged  
4 violation pursuant to the procedures specified in Division 5  
5 (commencing with Section 6300).

6 (i) If the division issues a citation, the employee may not  
7 commence an action pursuant to Section 2699. The division shall  
8 notify the aggrieved employee and employer in writing within 14  
9 calendar days of certifying that the employer has corrected the  
10 violation.

11 (ii) If by the end of the period for inspection or investigation  
12 provided for in Section 6317, the division fails to issue a citation  
13 and the aggrieved employee disputes that decision, the employee  
14 may challenge that decision in the superior court. In such an action,  
15 the superior court shall follow precedents of the Occupational  
16 Safety and Health Appeals Board. If the court finds that the division  
17 should have issued a citation and orders the division to issue a  
18 citation, then the aggrieved employee may not commence a civil  
19 action pursuant to Section 2699.

20 (iii) A complaint in superior court alleging a violation of  
21 Division 5 (commencing with Section 6300) other than those listed  
22 in Section 2699.5 shall include therewith a copy of the notice of  
23 violation provided to the division and employer pursuant to  
24 paragraph (1).

25 (iv) The superior court shall not dismiss the action for  
26 nonmaterial differences in facts or theories between those contained  
27 in the notice of violation provided to the division and employer  
28 pursuant to paragraph (1) and the complaint filed with the court.

29 (B) If the division fails to inspect or investigate the alleged  
30 violation as provided by Section 6309, the provisions of subdivision  
31 (c) shall apply to the determination of the alleged violation.

32 (3) (A) Nothing in this subdivision shall be construed to alter  
33 the authority of the division to permit long-term abatement periods  
34 or to enter into memoranda of understanding or joint agreements  
35 with employers in the case of long-term abatement issues.

36 (B) Nothing in this subdivision shall be construed to authorize  
37 an employee to file a notice or to commence a civil action pursuant  
38 to Section 2699 during the period that an employer has voluntarily  
39 entered into consultation with the division to ameliorate a condition  
40 in that particular worksite.

1 (C) An employer who has been provided notice pursuant to this  
2 section may not then enter into consultation with the division in  
3 order to avoid an action under this section.

4 (4) The superior court shall review and approve any proposed  
5 settlement of alleged violations of the provisions of Division 5  
6 (commencing with Section 6300) to ensure that the settlement  
7 provisions are at least as effective as the protections or remedies  
8 provided by state and federal law or regulation for the alleged  
9 violation. The provisions of the settlement relating to health and  
10 safety laws shall be submitted to the division ~~not fewer than 20~~  
11 ~~calendar days prior to being~~ *at the same time that they are*  
12 submitted to the court. This requirement shall be construed to  
13 authorize and permit the division to comment on those settlement  
14 provisions, and the court shall grant the division's commentary  
15 the appropriate weight.

16 (c) A civil action by an aggrieved employee pursuant to  
17 subdivision (a) or (f) of Section 2699 alleging a violation of any  
18 provision other than those listed in Section 2699.5 or Division 5  
19 (commencing with Section 6300) shall commence only after the  
20 following requirements have been met:

21 (1) The aggrieved employee or representative shall give written  
22 notice by certified mail to the Labor and Workforce Development  
23 Agency and the employer of the specific provisions of this code  
24 alleged to have been violated, including the facts and theories to  
25 support the alleged violation.

26 (2) (A) The employer may cure the alleged violation within 33  
27 calendar days of the postmark date of the notice. The employer  
28 shall give written notice by certified mail within that period of  
29 time to the aggrieved employee or representative and the agency  
30 if the alleged violation is cured, including a description of actions  
31 taken, and no civil action pursuant to Section 2699 may commence.  
32 If the alleged violation is not cured within the 33-day period, the  
33 employee may commence a civil action pursuant to Section 2699.

34 (B) No employer may avail himself or herself of the notice and  
35 cure provisions of this subdivision more than three times in a  
36 12-month period for the same violation or violations contained in  
37 the notice, regardless of the location of the worksite.

38 (3) If the aggrieved employee disputes that the alleged violation  
39 has been cured, the aggrieved employee or representative shall  
40 provide written notice by certified mail, including specified

1 grounds to support that dispute, to the employer and the agency.  
2 Within 17 calendar days of the postmark date of that notice, the  
3 agency shall review the actions taken by the employer to cure the  
4 alleged violation, and provide written notice of its decision by  
5 certified mail to the aggrieved employee and the employer. The  
6 agency may grant the employer three additional business days to  
7 cure the alleged violation. If the agency determines that the alleged  
8 violation has not been cured or if the agency fails to provide timely  
9 or any notification, the employee may proceed with the civil action  
10 pursuant to Section 2699. If the agency determines that the alleged  
11 violation has been cured, but the employee still disagrees, the  
12 employee may appeal that determination to the superior court.

13 (d) The periods specified in this section are not counted as part  
14 of the time limited for the commencement of the civil action to  
15 recover penalties under this part.

16 SEC. 3. This act is an urgency statute necessary for the  
17 immediate preservation of the public peace, health, or safety within  
18 the meaning of Article IV of the Constitution and shall go into  
19 immediate effect. The facts constituting the necessity are:

20 In order to address the existing economic conditions in California  
21 by spurring new job creation, it is necessary for this act to take  
22 effect immediately.